

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

AMERICAN SELECT INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff MEDINA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

de LUCA LEVINE LLC, 301 E. Germantown Pike, 3rd
Floor, East Norriton, PA 19401 Ph: 215-383-0081

DEFENDANTS

AMAZON.COM INC. and EASYRC

County of Residence of First Listed Defendant KING
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|---|---|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input checked="" type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

6/2/23

s/ Matthew Connolly

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

**AMERICAN SELECT INSURANCE
COMPANY**

**One Park Circle
Westfield Center, OH 44251-5001**

Plaintiff

v.

**AMAZON.COM INC.
410 Terry Avenue N.
Seattle, WA 98109,**

And

**EASYRC
553 Capital Cir SW, Unit 4
Tallahassee, FL 32304-3669**

Defendants

Civil Action No: 2:23-cv-11327

Judge

**JURY DEMAND ENDORSED
HEREON**

COMPLAINT

Plaintiff, by and through its undersigned counsel, hereby demands judgment against Defendants and complains against them as follows:

PARTIES

1. Plaintiff, American Select Insurance Company (“ASIC”), is an insurance company, organized under the laws of the state of Ohio with its principal place of business located at the above address.

2. At all times relevant hereto, ASIC was duly authorized to engage in the business of, *inter alia*, property insurance in Michigan.

3. At all times relevant hereto, ASIC provided property insurance to Jennifer Vidican (“Ms. Vidican” or “Subrogor”) in connection with her property located at 2273 Malena Lane, Oxford, MI 48371 (“the subject property”) under a policy of insurance that was in full force and effect at all relevant times.

4. Defendant, Amazon.com Inc. (“Amazon” or collectively as “Defendants”), was at all relevant times, a corporation organized and existing under the laws of the State of Delaware, with its headquarters and principal place of business located at 410 Terry Avenue N, Seattle, WA 98109.

5. Amazon is in the business of, *inter alia*, selling, distributing, marketing, and/or delivering a variety of products to consumers, including the Eazycr EAZ11807 Glacier 1/18 RTR Scale Mini Crawler radio-controlled car (“the subject RC car”), which included a lithium ion battery (“the subject battery”), and was sold by Amazon prior to the fire as more fully described below.

6. Defendant EASYRC, upon information and belief, was at all relevant times a company with its headquarters and principal places of business both located at 553 Capital Cir SW, Unit 4, Tallahassee, FL 32304-3669.

7. EASYRC, upon information and belief, is in the business of, *inter alia*, selling, distributing, marketing, assembling, installing and/or delivering a variety of products to consumers, including the subject RC car and the subject battery which were sold prior to the fire as more fully described below.

JURISDICTION AND VENUE

8. Jurisdiction is based on 28 U.S.C. §1332(a)(1) as this action involves a controversy between citizens of different states, and the Plaintiff is not a legal citizen or resident of any of the states and jurisdictions where any of the Defendants are legal citizens or residents. Moreover, the amount in controversy exceeds the jurisdictional threshold of this Court (exclusive of interest and costs).

9. This Court has personal jurisdiction over this matter because Defendants purposefully availed themselves of the benefit of the laws of this jurisdiction by regularly transacting and/or conducting business herein.

10. Venue is proper in this district based on 28 U.S.C. §1391(a) in that the events giving rise to this claim occurred within this district.

STATEMENT OF FACTS

11. Plaintiff incorporates by reference the preceding averments as though set forth at length herein.

12. On or about February, 2022, Sean Vidican, Jennifer Vidican's son, purchased the subject RC car from Amazon.

13. Sean Vidican used the subject RC car and the subject battery for its intended purposes without incident from approximately February 11, 2022 through May 11, 2022.

14. Sean Vidican did not experience any problems with the functionality of the subject RC car or the subject battery prior to the date of the subject fire.

15. On May 11, 2022, while the subject battery was charging at the subject property, the subject battery malfunctioned, catastrophically failed and caused a fire that led to extensive damage to Jennifer Vidican's real and personal property, as well as the imposition of additional expenses and hardship besides, which was directly and proximately caused by the Defendants as is further and more fully described below.

16. ASIC reimbursed Ms. Vidican for such damages in accord with the terms and conditions of the aforementioned insurance policy, and now seeks reimbursement for such damages against the responsible parties.

COUNT I
ASIC v. AMAZON
NEGLIGENCE

17. Plaintiff incorporates by reference the preceding averments as though set forth at length herein.

18. The aforementioned damages were the direct and proximate result of the negligence and carelessness of Amazon, by and through its employees, agents, technicians, vendors, subcontractors, and/or servants, more specifically described as follows:

- a. failing to exercise reasonable care in the following manner:
 - i. failing to properly sell, inspect, test, distribute and/or market a functioning product that was free of defects;
 - ii. failing to properly determine that the subject RC car and the subject battery and/or its component parts were free of defects and/or in compliance with applicable safety standards;
 - iii. failing to provide safe and adequate warnings or instructions with the subject RC car and the subject battery;
 - iv. selling, inspecting, testing, distributing and/or marketing the subject battery when Amazon knew or should have known that the subject RC car and the subject battery and/or its component parts would be defective and unreasonably dangerous; and/or
 - v. failing to do the necessary due diligence as to the company that sold and/or manufactured the subject RC car and the subject battery, so as to ensure that Amazon was marketing, selling and/or distributing a safe product that was free from dangerous defects.

- b. failing to adequately instruct, supervise and/or train servants, employees and agents, and/or suppliers as to the proper ways to perform the tasks set forth in subparagraph (a);
- c. failing to adequately warn others of the dangers and hazardous conditions resulting from the conduct set forth in subparagraph (a) above;
- d. failing to provide, establish, and/or follow proper and adequate controls so as to ensure the proper performance of the tasks set forth in subparagraph (a) above;
- e. failing to properly monitor the work of all servants, agents, employees and/or suppliers to prevent the omissions and errors set forth in subparagraph (a) above;
- f. failing to retain competent, qualified and/or able agents, employees, servants and/or suppliers to perform the tasks set forth in subparagraph (a) above;
- g. failing to perform the tasks set forth in subparagraph (a) above in conformity with the prevailing industry and governmental specifications and standards; and/or
- h. violating the standards of care prescribed by statutes, rules, regulations, ordinances, codes, and/or industry customs applicable to this action.

19. As a direct and proximate result of such negligent conduct, Ms. Vidican sustained and incurred the aforementioned damages in excess of \$75,000.00.

WHEREFORE, Plaintiff respectfully requests judgment against Amazon in an amount in excess of \$75,000.00, plus costs incident to this suit, delay damages, interest, attorney fees, and such other relief as this Honorable Court shall deem appropriate under the circumstances.

COUNT II
ASIC v. EASYRC
NEGLIGENCE

20. Plaintiff incorporates by reference the preceding averments as though set forth at length herein.

21. The aforementioned damages were the direct and proximate result of the negligence and carelessness of EASYRC, by and through employees, agents, technicians, vendors, subcontractors, and/or servants, more specifically described as follows:

- a. failing to exercise reasonable care in the following manner:
 - i. failing to design, assemble, manufacture, sell, inspect, test, distribute and/or market a properly functioning product;
 - ii. failing to properly determine that the subject RC car and subject battery and/or its component parts were not in compliance with applicable standards;
 - iii. failing to provide safe and adequate warnings or instructions with the subject RC car and subject battery; and/or
 - iv. designing, assembling, manufacturing, selling, inspecting, testing, distributing and/or marketing the subject RC car and subject battery when they knew or should have known that the subject product and/or its component parts would be defective and unreasonably dangerous.
- b. failing to adequately instruct, supervise and/or train servants, employees and agents as to the proper ways to perform the tasks set forth in subparagraph (a);

- c. failing to adequately warn others of the dangers and hazardous conditions resulting from the conduct set forth in subparagraph (a) above;
- d. failing to provide, establish, and/or follow proper and adequate controls so as to ensure the proper performance of the tasks set forth in subparagraph (a) above;
- e. failing to properly monitor the work of all servants, agents, employees, subcontractors and suppliers to ensure compliance with applicable safety procedures;
- f. failing to retain competent, qualified and/or able agents, employees, servants, subcontractors and suppliers to perform the tasks set forth in subparagraph (a) above and to avoid the sale and distribution of unsafe products;
- g. failing to perform the tasks set forth in subparagraph (a) above in conformity with the prevailing industry and governmental specifications and standards; and/or
- h. violating the standards of care prescribed by statutes, rules, regulations, ordinances, codes, and/or industry customs applicable to this action.

22. As a direct and proximate result of such negligent conduct, Ms. Vidican sustained and incurred the aforementioned damages in excess of \$75,000.00.

WHEREFORE, Plaintiff respectfully requests judgment against EASYRC, individually, and/or jointly and severally, in an amount in excess of \$75,000.00, plus costs incident to this suit, delay damages, interest, attorney fees, and such other relief as this Honorable Court shall deem appropriate under the circumstances.

COUNT III
ASIC v. AMAZON
BREACH OF EXPRESS AND IMPLIED WARRANTIES

23. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

24. Amazon expressly and/or impliedly warranted to the purchaser, user and public that the subject RC car and subject battery charger, were free from defects and of merchantable quality; reasonably fit for the purpose for which they were intended in the ordinary and reasonable use thereof; and reasonably fit for the particular purposes for which they were purchased.

25. Amazon breached its express and/or implied warranties in that the subject RC car and subject battery were not free from defects, not of merchantable quality, not reasonably fit for the purpose for which they were intended in the ordinary and reasonable use thereof, and not reasonably fit for the particular purpose for which they were purchased.

26. Amazon knew that the purchaser, user and public were relying on Amazon's individual and collective expertise, skill and judgment in furnishing such goods to meet these warranties.

27. The incident at issue, and the damages and losses sustained resulted directly and proximately from Amazon's breach of these expressed and/or implied warranties, for which claim is hereby made.

28. Plaintiff and Jennifer Vidican have met any and all conditions precedent to recovery for such breaches.

WHEREFORE, Plaintiff respectfully requests judgment against Amazon, individually, and jointly and severally, in an amount in excess of \$75,000.00, plus costs incident to this suit, delay damages, interest, attorney fees, and such other relief as this Honorable Court shall deem appropriate under the circumstances.

COUNT IV
ASIC v. EASY RC
BREACH OF EXPRESS AND IMPLIED WARRANTIES

29. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though they were set forth at length herein.

30. EASYRC expressly and/or impliedly warranted to the purchaser, user and public that the subject RC car and subject battery charger, were free from defects and of merchantable quality; reasonably fit for the purpose for which they were intended in the ordinary and reasonable use thereof; and reasonably fit for the particular purposes for which they were purchased.

31. EASYRC breached its express and/or implied warranties in that the subject RC car and subject battery were not free from defects, not of merchantable quality, not reasonably fit for the purpose for which they were intended in the

ordinary and reasonable use thereof, and not reasonably fit for the particular purpose for which they were purchased.

32. EASYRC knew that the purchaser, user and public were relying on EASYRC's individual and collective expertise, skill and judgment in furnishing such goods to meet these warranties.

33. The incident at issue, and the damages and losses sustained resulted directly and proximately from EASYRC's breach of these expressed and/or implied warranties, for which claim is hereby made.

34. Plaintiff and Ms. Vidican have met any and all conditions precedent to recovery for such breaches.

WHEREFORE, Plaintiff respectfully request judgment against EASYRC, individually, and jointly and severally, in an amount in excess of \$75,000.00, plus costs incident to this suit, delay damages, interest, attorney fees, and such other relief as this Honorable Court shall deem appropriate under the circumstances.

COUNT V
ASIC v. AMAZON
STRICT LIABILITY

35. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though the same were set forth at length herein.

36. The subject RC car and subject battery were not abused, misused or altered in any manner from the condition in which it was supplied by the Defendant.

37. The Defendant is liable, and legally responsible, to the Plaintiff for the damages caused by the fire by virtue of Michigan Compiled Laws, Section 600.2946, et seq. (Act 236 of 1961, Section 29) in one or more of the following respects:

- (a) the subject RC car and the subject battery were in a defective and unreasonable dangerous condition;
- (b) the Defendant sold the subject RC car and the subject battery in a condition that it knew, or should have known, subjected the property of others to foreseeable and unreasonable risk of harm;
- (c) the Defendant sold the subject RC car and the subject battery in a condition that was neither merchantable or fit for the purpose for which such products are ordinarily and foreseeably used;
- (d) the Defendant failed to provide proper and adequate warnings regarding the hazards associated with the foreseeable and ordinary use the subject RC car and subject battery;
- (e) the Defendant was negligent in failing to properly and adequately test and/or service the subject RC car and subject battery chair prior to selling them; and

38. As a direct result of the Defendant's liability pursuant to Michigan Compiled Laws, Section 600.2947 (Act 236 of 1961, Section 29), the fire of May 11, 2022 occurred, resulting in damages to Ms. Vidican's real and personal property.

WHEREFORE, Plaintiff respectfully requests judgment against Amazon, individually, and jointly and severally, in an amount in excess of \$75,000.00, plus costs incident to this suit, delay damages, interest, attorney fees, and such other relief as this Honorable Court shall deem appropriate under the circumstances.

**COUNT VI
ASIC V. EASYRC
STRICT LIABILITY**

39. Plaintiff repeats the allegations set forth in the prior paragraphs of this Complaint as though the same were set forth at length herein.

40. The subject RC car and subject battery were not abused, misused or altered in any manner from the condition in which it was supplied by the Defendant.

41. The Defendant is liable, and legally responsible, to the Plaintiff for the damages caused by the fire by virtue of Michigan Compiled Laws, Section 600.2946, et seq. (Act 236 of 1961, Section 29) in one or more of the following respects:

(a) the subject RC car and the subject battery were in a defective and unreasonable dangerous condition;

(b) the Defendant sold the subject RC car and the subject battery in a condition that it knew, or should have known, subjected the property of others to foreseeable and unreasonable risk of harm;

(c) the Defendant sold the subject RC car and the subject battery in a condition that was neither merchantable or fit for the purpose for which such products are ordinarily and foreseeably used;

(d) the Defendant failed to provide proper and adequate warnings regarding the hazards associated with the foreseeable and ordinary use the subject RC car and subject battery;

(e) the Defendant was negligent in failing to properly and adequately test and/or service the subject RC car and subject battery chair prior to selling them; and

42. As a direct result of the Defendant's liability pursuant to Michigan Compiled Laws, Section 600.2947 (Act 236 of 1961, Section 29), the fire of May 11, 2022 occurred, resulting Plaintiff's damages.

WHEREFORE, Plaintiff respectfully requests judgment against EASYRC, individually, and jointly and severally, in an amount in excess of \$75,000.00, plus costs incident to this suit, delay damages, interest, attorney fees, and such other relief as this Honorable Court shall deem appropriate under the circumstances.

Respectfully Submitted,

BY: s/ Matthew Connolly
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Dated: June 2, 2023